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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

HAMLIN, DERRICK G

ART UNIT PAPER NUMBER

1751

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,945

Applicant(s)

JONES, DENNIS J.

Examiner

Derrick G. Hamlin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-67 is/are pending in the application.
- 4a) Of the above claim(s) 54-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 45-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 45-53, drawn to an aqueous treating composition, classified in class 8, subclass 115.51.
- II. Claims 54-67, drawn to a method for treating a fiber, classified in class 428, subclass 365.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with J. Hutter on 12/1/04 a provisional election was made with traverse to prosecute the invention of Group 1, claims 45-53.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 54-67 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Evaluations of level of ordinary skill in the art requires consideration of factors such as various prior art approaches employed, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, failure of others, and the inventor's educational level.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The references of record in this case reasonably reflect this level of skill.

Claims 45-47 rejected under 35 U.S.C. 102(b) as being anticipated by Gamblin (US 4842646 A).

Gamblin discloses a textile dye with the following preferred embodiment of an aqueous ink or dye bath comprising:

(a) about 0.0001 to about 15 parts by weight of a water insoluble nigrosine dye, induline dye or basic dye; (b) about 0.0001 to about 60 parts by weight of a

hydroxycarboxylic acid having at least three hydroxy groups; (c) about 0.0001 to about 60 parts by weight of a water miscible solvent; (d) about 25 to about 100 parts by weight of water; and optionally, (e) about 0.0001 to about 30 parts by weight of a mordant (e.g., tannic acid or gallic acid, preferably tannic acid). (col. 3, lines 50-68)

The reference is anticipatory.

Claims 45-50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by DeLathauwer et al (US 5,738,688 A).

DeLathauwer invention consists of a process to improve the resistance to stains on fibres, processed or not, finished or not on the basis of dyeable natural or synthetic fibres, in particular polyamide. According to the invention the fibers with a solution containing tannic acid and a condensation product of a sulphonated phenol- or naphtol-derivate with an aldehyde. The treatment can be made before, during or after the dyeing process. The treatment is done in an acid medium. (abstract) According to the invention, the substrate, in acid medium, is treated with a solution containing 1 to 6% (weight %) active component, consisting of 10 to 90%, preferably 40 to 80% tannic acid (tannic acid component) and 10 to 90%, preferably 20 to 60% condensation product of a sulphonated phenol- or naphtol-derivate with an aldehyde (sulphon component). (col. 2, lines 20-24) To avoid oxidation of the substrate, it is also recommended to add a non volatile, non hygroscopic and preferably non corroding acid, as e.g. an aliphatic carboxylic acid such as citric acid or polyacrylic acids. (col. 3, lines 20-24) The sulphonic component is a condensation product of a sulphonated phenol- or naphtol-derivate with an aldehyde. Such compounds contain at least a sulphonic group in acid

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and/or salt form, which is combined with at least a carbon atom of a phenol or naphtol group. (col. 3, lines 25-29) The solution containing both components must preferably have a pH between 2.5 and 5, and eventually be adjusted by adding an acid for instance a sulfamic acid, formic acid, acetic acid. (col. 3, lines 45-49) It can be advantageous to increase the molecular chain of the components for instance through cross-linking by adding to the solution or to the rinsing water a complexing agent, such as aluminium potassium sulphate or potassium antimonyl tartrate, or a compound reducing the solubility of the sulphon component, such as silicium dioxide gel, a magnesium or zirconium salt. (col .3, lines 36-41) The reference also teaches the condensation products of sulphonated phenol- or naphtol-formaldehydes in presence of an alkaline metal silicate. (col 1, lines 45-46)

The reference is anticipatory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeLathauwer et al (US 5,738,688 A).

The reference is relied upon for the reasons set forth in the rejection above.

The reference fails to teach the specific weight of solids and the concentration of the fluorochemical.

The reference does teach that a solution is formed and that methacrylic polymer are used, therefore there would be a reasonable expectation of success to modify the prior art to arrive at the instantly claimed invention because the prior art suggest a solution which by definition contains no solids and a polymer that is know to be mixed with a fluorochemical in the required amounts. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the instant composition in view of the reference.

In view of the forgoing, the above claims have failed to be patently distinguishable over prior art.

The remaining references listed on form(s) 892 and/or 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 4822373 A discloses a process for providing polyamide materials with stain resistance and teaches that it is well know in the art to use fluorochemical compositions for providing oil and water repellency can also be applied in conjunction with the sulfonated novolak resin and the methacrylic polymer. The

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fluorochemical composition is simply added in an appropriate amount to the treating solution.

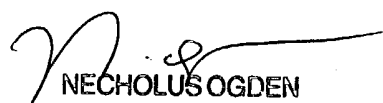
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derrick G. Hamlin whose telephone number is (571) 272-1317. The examiner can normally be reached on Monday-Fridays from ~8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Yogendra Gupta, can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Derrick G. Hamlin

12/9/04



NECHOLUS OGDEN
PRIMARY EXAMINER